



INDIANA DEPARTMENT OF TRANSPORTATION

Driving Indiana's Economic Growth

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CONSTRUCTION MEMORANDUM 12-03

TO: District Deputy Commissioners
District Construction Directors
District Testing Engineers
District Area Engineers
District LPA Coordinators
Field Engineers
Technical Services Directors
Project Engineers/Supervisors
Office of Materials Management

FROM: Mark A. Miller, Director
Construction Management Division

SUBJECT: Non-Participating Pay Items on Change Orders

Within the last year a new check box has been added in the SiteManager change order process to allow the PE/S to mark items as "Non-Participating" when appropriate. Just for reference this box can be found in "Change Order Items" in the "New Contract Items" tab.

It has been brought to my attention that the box is being checked when it is not appropriate to do so. Therefore, this memo is being sent out in order to clarify when items should be marked as non-participating.

"Non-participating" means that an item is not eligible for federal funding and "participating" means that an item is eligible for federal funding.

What some individuals are currently doing is marking items as "non-participating" just because the items will be a part of either a 100% State funded or 100% LPA funded purchase order, in other words, just because the item will not utilize Federal funds on the contract. This however does not mean that the item is a "non-participating" item.

An item should only be checked as "non-participating" if it is an item that is being added to the contract that is one that FHWA would not normally agree to participate in the funding.

Federal regulations prohibit the use of federal funds for payment of some pay items. A list of the types of items of work that are not normally eligible for federal funding is attached to this memo and should be used as a way to help decide if an item should be marked as “non-participating” in SiteManager.

Prior to executing change orders that add new pay items to the contract, the PE/S should check the list of non-participating work categories to verify whether any of the pay items included in the change order require the “non-participating” designation. In situations where the “non-participating” designation is required, it is necessary to designate the affected pay items as “non-participating” and purchase orders utilizing 100% State or 100% LPA funds must be utilized to pay for these “non-participating” items.

The PE/S will need to work with District personnel to either add the required funds to an existing 100% State funded or 100% LPA funded purchase order as appropriate or to establish new 100% State funded or 100% LPA funded purchase orders to facilitate payment for the “non-participating” work.

One other item that needs to be pointed out is that just because an item on a change order is “non-participating” does not mean that the entire change order itself will be non-participating. If you have both “participating” and “non-participating” items on the same change order make sure that the amounts get split up when adding the funds to purchase orders.

Once the “non-participating” item is added to the contract an “*” will be included with the item on the estimate. Please note that it is not necessary to designate the item as “non-participating” in the item name but it would be helpful to explain that the item is non-participating when the change order explanation is prepared in SiteManager.

If there are any questions regarding the content of this memo, please contact the Construction Management Field Engineer assigned to your District.

Attachment: FREQUENT FEDERAL NON-PARTICIPATING ITEMS

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FREQUENT FEDERAL NON-PARTICIPATING ITEMS

- Work outside the highway right-of-way without permits, etc.
- Work outside the limits of the project (unless necessary to implement project; traffic control, etc.) Work performed outside the NEPA limits of the project may jeopardize federal funding for the project.
- Work not necessitated by the highway project (i.e. fence upgrades, utility upgrades, etc.)
- Adjustment of private facilities (signs, fences, lawn sprinklers, etc., unless covered as a part of a right-of-way agreement or permit)
- Storm and sanitary sewer work and other drainage or utility work that is not a result or purpose of the road or bridge work. Example: replacing sewer leads that were not in conflict with the construction activity proposed.
- Excessively expensive treatments that do not appear to be in the public interest. This could include expediting the project for a questionable purpose, or proposing the use of very extravagant roadway treatments or street side appurtenances.
- Significant hauling or transportation charges of salvaged items to INDOT's or agency garages or storage sites for future use on non-federal projects. Hauling for less than 5 miles from the project site has been used by some state transportation department's construction engineers as a reasonable distance to haul material.
- Non-conforming work such as substandard details, designs determined undesirable or discontinued because of poor performance. Example: A588 guardrail, salt susceptible roadside plantings, etc.
- Payment for items that are the responsibility of others. Such as relocation of utilities located within the right-of-way, relocation of public facilities outside their corporate limits, accident damage that is the responsibility of others (driver, owner, insurance company, etc.)
- Payment for work done by an unapproved subcontractor.
- Payment for betterments that are not currently part of the project. Example: payment for excess sizing of sanitary sewer adjustment for future development. The additional cost over replacement-in-kind should be borne by the owner of the facility being adjusted.
- Payment for work that should typically be considered maintenance work by the owner agency. Examples: graffiti removal, snow plowing, trash removal, moving roadsides, etc.
- Payment for rework (including incorporated materials, etc).
- Payment of work and materials not meeting specifications that are incorporated into the project.

- Contact claim awards if state transportation department is determined to be negligent. Example: utility and right-of-way claims.
- Administrative settlements not adequately supported and justified.
- Specifying use of proprietary items, (i.e., specific brand name or single manufacturer items such as Eagle controllers, 3M sign sheeting, Caterpillar diesel, Hewlett Packard computer) unless:
 - Suitable number of other proprietary items or generic items are allowed.
 - INDOT certifies (via public information finding) proprietary item is essential for synchronization with existing highway facilities or that no equally suitable alternate exists.
 - Proprietary item is used for experimental purposes.
 - FHWA finds it is in the public interest to use a proprietary item.